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PACIFIC  **TELESIS**
Group-Washington

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: CC Docket No. 96-115, *Telecommunications Carriers' Use of Customer
Proprietary Network Information and Other Customer Information*

On behalf of Pacific Telesis Group, please find enclosed an original and six copies of
its "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact
me should you have any questions or require additional information concerning this
matter.

Sincerely,

Gina Harrison (J2B)

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of the Telecommunications Act of
1996:

Telecommunications Carriers' Use of Customer
Proprietary Network Information and Other
Customer Information

CC Docket No. 96-115

COMMENTS OF PACIFIC TELESIS GROUP

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FEDERAL COMMUNICATIONS COMMISSION
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Telecommunications Carriers' Use of Customer
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Customer Information

CC Docket No. 96-115

COMMENTS OF PACIFIC TELESIS GROUP

I. INTRODUCTION AND SUMMARY OF COMMENTS

Pacific Telesis Group ("Pacific") hereby submits comments regarding the Commission's proposed Customer Proprietary Network Information ("CPNI") rules. Pacific urges the Commission to interpret and apply new Section 222 of the Telecommunications Act of 1996 in a way that will allow carriers to serve their customers with flexibility and innovation, equalize the treatment of all competing telecommunications providers, and minimize regulatory burdens. We advocate that the Commission:

- Promulgate new rules pursuant to the Telecommunications Act of 1996 ("1996 Act") without engaging in excessive regulation;

- Provide that the three telecommunications services “buckets” it proposes evolve to accommodate changing technology;
- Treat enhanced services and CPE as part of the local exchange or interexchange “buckets” where the carrier offers enhanced services or CPE as part of a package with its traditional services;
- Allow carriers to seek oral approval to use CPNI;
- Allow carriers, in addition, to give customers written notice of the uses they and their affiliates intend for CPNI, and to presume that a customer has given authorization if he does not indicate his desire to “opt out” of such use;
- Refrain from promulgating unnecessary new rules with regard to aggregate customer information and release of CPNI to third parties;
- Eliminate to the maximum extent possible the existing Computer III CPNI rules and regulatory distinctions among providers of telecommunications services with respect to CPNI; and
- Minimize regulation with regard to subscriber list information.

II. **THERE IS A NEED TO CLARIFY CERTAIN CARRIER OBLIGATIONS UNDER THE 1996 ACT**

As the Commission’s explanation of the existing CPNI rules reveals, the current regulatory scheme was developed largely in piecemeal fashion in various Commission decisions.¹ In order to rationalize the treatment of CPNI and bring it into correspondence with the 1996 Act, we agree

¹ See Notice of Proposed Rulemaking (“NPRM”), ¶¶ 4-6.

with the Commission's tentative conclusion that it would be in the public interest for the Commission to interpret and specify in more detail certain of the obligations spelled out in Section 222.² As indicated below, however, we urge the Commission not to add unnecessary detail to those provisions of Section 222 that are sufficiently prescriptive and clear already. The Commission should be guided by a policy that disfavors excessive regulation. If, for example, the Act does not require that details be addressed by the Commission, the Commission should remain silent and in so doing reduce the scale of federal regulation.

III. THE COMMISSION'S DIVISION OF "TELECOMMUNICATIONS SERVICES" INTO THREE "BUCKETS" IS GENERALLY APPROPRIATE, BUT SHOULD EVOLVE OVER TIME

We are not generally opposed to the Commission's proposal to create three distinct "buckets" of telecommunications services for CPNI purposes: 1) local (including short haul toll), 2) interexchange (including interstate, intrastate and international long distance offerings, as well as short haul toll), and 3) commercial mobile radio services ("CMRS").³ However, the Commission should devise a mechanism to reexamine the "buckets" as technology evolves. For example, when wireless service becomes more widely used as a complete substitute for wireline service, it may become inappropriate to maintain CMRS as a separate "bucket." Likewise, the rules dividing local exchange services and interexchange services into two "buckets" should no longer apply to a BOC or

² Id., ¶ 15.

³ Id., ¶ 22.

to IXCs providing local exchange service in that BOC's territory once that BOC is authorized to offer long distance service.⁴

A. Enhanced Services and CPE Should Be Treated as Part of The Local Exchange and Interexchange "Buckets" to the Extent A Carrier Packages Enhanced Services or CPE With Its Traditional Telecommunications Services

The Commission does not place enhanced services or CPE in any of the foregoing "buckets,"⁵ and Section 222 makes no specific mention of either. Many carriers already package enhanced services and CPE with their traditional service offerings. The Commission concedes that the "buckets" should be defined based on services which "under traditional service distinctions . . . [carriers] market and provide . . . as part of an integrated package."⁶ Thus, the 1996 Act should be construed to allow such carriers to treat enhanced services and CPE as if they are in the same bucket as the traditional local exchange or interexchange services the carriers offer.

B. The 1996 Act Authorizes Carriers to Use CPNI to Perform Installation, Maintenance and Repair Services

The 1996 Act in no way limits a carrier's use of CPNI to perform installation, maintenance or repair services. Even if Congress had intended to impose such a limitation, the exception in Section 222(d)(1) -- permitting access to CPNI "to initiate, render, bill, and collect for telecommunications services" -- "permits carriers, without prior customer authorization, to use a

⁴ Over a decade ago, the Commission analyzed the nature of wireless offerings and concluded that the wireless family of services can be provided as whole without regard to the distinction of CPE and enhanced/information services. In the Matter of Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, CC Docket No. 84-637, 57 Rad. Reg. 2d 989 (1985).

⁵ See NPRM, ¶ 25.

⁶ *Id.*

customer's CPNI derived from the provision of one telecommunications service to perform installation, maintenance and repair for any telecommunications service to which that customer subscribes.”⁷ To “initiate” telecommunications services is, at the very least, to “install” them. The Section 222(d)(1) exception allowing access to CPNI without prior authorization to “render” telecommunications service should also allow the carrier to engage in maintenance and repair services.

Likewise, Section 222(c)(1)(B), which allows the carrier to use, access and disclose CPNI in the provision of “services necessary to, or used in, the provision of such telecommunications service” must include permission to engage in installation, maintenance and repair.⁸ One cannot “provide” service without also installing it, maintaining it, and repairing it when necessary; if the service is not kept in working order, the carrier is no longer “providing” it to its customer.

IV. THE RULES REGARDING CUSTOMER APPROVAL FOR USE OF CPNI SHOULD BE FLEXIBLE, AND ALLOW ORAL APPROVAL OR WRITTEN NOTICE WITH AN “OPT OUT” MECHANISM

A. Carriers May Obtain Oral Approval To Use CPNI For Their Own Marketing Of Services In Other “Buckets”

We strongly support rules that give carriers flexibility in choosing the means by which they seek customer authorization to use CPNI to market services in other “buckets.” Thus, a carrier should be allowed to seek CPNI authorization orally, but should not be precluded from obtaining approval by other means if it chooses. Once a carrier obtains such authorization, both the carrier and its affiliates should be allowed to use the CPNI to market telecommunications services other than the

⁷ Id., ¶ 26.

⁸ Id.

services from which the CPNI was derived.⁹ Under the new environment required by the 1996 Act, most customers will have the choice among multiple carriers for all of their communications needs. Therefore, if a customer feels that a given carrier intrudes by excessive advertising or promotion, he can now (or soon) simply choose another provider.

As the Commission suggests, oral customer authorization is adequate to satisfy the Act.¹⁰ Congress explicitly referred to “written” authorization in Section 222(c)(2), pertaining to “affirmative written request by the customer” for release of CPNI to a person designated by the customer. Had Congress intended to require carriers to obtain “written” customer approval for use of CPNI in Section 222(c)(1) -- the immediately preceding section -- it easily could have said so; thus, oral authorization is allowed. We agree with the Commission that Section 222(c)(1) does not preclude a carrier from conducting outbound telemarketing campaigns, or initiating any other type of contact, for purposes of soliciting oral CPNI approval from customers.¹¹

We disagree with the Commission’s proposal to impose a burden of proof on carriers in the case of oral approval.¹² Nothing in the Act requires imposing such a burden on carriers. In a competitive environment, it does not serve the interests of a carrier to alienate its customers by misusing their CPNI. Responsible carriers will create processes to indicate that they have obtained customer approval so they can use that CPNI to market services in other categories, and their systems will provide the necessary audit trail. No regulatory mandate in this area is needed. However, if the

⁹ Of course, no such authorization is needed for the carrier and its affiliates to use CPNI derived from the telecommunications service offered for the provision of that service or services necessary to or used in the provision of such telecommunications service. 47 U.S.C. § 222(c)(1)(B).

¹⁰ NPRM, ¶ 30.

¹¹ See *id.*, ¶¶ 30-32.

¹² *Id.*, ¶ 32.

Commission insists upon placing the burden of proof on carriers, it should not specify a means of meeting the burden of proof, but leave that decision to the discretion of the carrier.

B. The Commission Should Also Allow Carriers to Seek Approval Via A Written Notification/"Opt Out" Mechanism Or Any Other Reasonable Means

The Commission should not preclude carriers from using means of seeking customer approval of CPNI use other than oral approval. Carriers may find it more efficient, for example, to give periodic or one-time written notice to their customers. Section 222(c)(1) does not preclude this: it simply requires "the approval of the customer" Because the statutory language is so open-ended, tacit approval will satisfy the "approval" requirement. Had Congress wished to prohibit tacit approval, it could have said so explicitly. Congress' silence regarding the type of CPNI approval carriers must receive -- especially in contrast to its specificity with regard to release of customer information to third parties in Section 222(c)(2) -- evinces an intent to allow approval by any reasonable means, including the "opt out" mechanism we propose below.

If a carrier issues a written notice informing its customers of its intent to use CPNI in other "telecommunications service" categories, and a customer fails to indicate his desire to "opt out" of the carrier's proposed use of CPNI, the customer should be deemed to have given "approval" for that activity. The carrier should be allowed to use the CPNI of customers who do not "opt out" to engage in any activities specified in the notice, including marketing activities across product categories and sharing such CPNI with the carrier's affiliates.

This notification and "opt out" mechanism has been used successfully under the existing CPNI rules for business customers with between two and twenty lines. The mechanism is also recognized by the National Telecommunications and Information Administration ("NTIA") in its 1995

report on “Privacy and the NII” as a reasonable mechanism to balance privacy concerns with the benefits of competition when, as with CPNI, the information is not of an extremely personal nature, such as credit information.¹³ “Opt out” mechanisms are also common in the context of class action lawsuits, in which potential class members must affirmatively inform the class representative if they do not wish to remain a part of the class.¹⁴

The burdens of requiring affirmative written approval to use CPNI would be great.¹⁵ Indeed, the Commission has already recognized that a requirement of affirmative written approval creates a form of structural separation.¹⁶ The Commission stated in the context of Computer III that “[a]pplying a prior authorization rule for other than the largest customers likely would require a BOC to establish separate enhanced and basic service marketing forces for those customers. . . . Under a prior authorization rule, a large majority of mass market customers are likely to have their CPNI restricted through inaction, and in order to serve them the BOCs would have to staff their business offices with network-services-only representatives, and establish separate marketing and sales forces for enhanced services.”¹⁷

¹³ U.S. Department of Commerce, National Telecommunications and Information Administration, “Privacy and the NII: Safeguarding Telecommunications-Related Personal Information,” October 1995, at 25 & n.98 (“a company should be allowed to use non-sensitive [Telecommunications Related Personal Information] for unrelated purposes unless the customer affected, having been notified of the company's plans, takes some action stopping such use. . . .”). (Pertinent excerpts of this paper are attached hereto as Appendix A.)

¹⁴ Fed. R. Civ. P. 23(c)(2).

¹⁵ NPRM, ¶ 31.

¹⁶ Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, Report and Order (“Computer III Remand”), 6 FCC Rcd 7571, ¶ 85 n.155 (1991).

¹⁷ Id. (emphasis added).

Our most significant concern is customer inaction, and the burden on customers if they have to indicate consent affirmatively. Customers may not respond even to a clearly-worded notice because it is counterintuitive that they need to take affirmative steps merely to maintain the status quo - - i.e., to continue to allow the carrier to market different services to them. Our existing customers are already on the receiving end of our marketing efforts. These customers do not expect us to ask for approval to market new services simply because the services are “different” from their existing services, because they make no intuitive distinction among telecommunications service categories. Thus, customers do not perceive that they will be harmed if their telecommunications carrier markets new services to them.

We are also concerned about the customer confusion an affirmative written approval requirement might engender. Customers may believe that since their permission is required, the carrier is proposing something harmful. Fearing harm, customers may withhold approval. We believe there is no potential for customer harm; rather, the pro-competitive benefits envisioned by the 1996 Act will occur as customers learn about new services from carriers with which they already do business, as well as from new market entrants.

Thus, a requirement of written customer approval or prior authorization for use of CPNI would effectively eliminate integrated marketing by the customer’s existing carrier. The carrier could not obtain customer approvals in sufficient numbers to warrant the expense of attempting to obtain such authorization.¹⁸ The Commission recognized the threat to integrated marketing posed by affirmative consent requirements in the context of Computer III: “[A] prior authorization rule would

¹⁸ In addition, a requirement of affirmative consent would vitiate the provision of Section 601(d) of the 1996 Act, which allows carriers to market CMRS services jointly with other telecommunications services.

vitiating a BOC's ability to achieve efficiencies through integrated marketing to smaller customers -- one of the benefits sought through adoption of nonstructural safeguards rather than structural separation."¹⁹

A requirement of affirmative written approval conflicts with the pro-competitive nature of the 1996 Act. The Act's goal is to stimulate the development of new services and encourage new service providers to enter the market, not to limit service offerings. However, a requirement of affirmative consent would effectively eliminate carriers' ability to market new services to their customers. The Commission should develop CPNI provisions that allow carriers to inform their customers how they propose to use CPNI and give the customers a means to prevent that use. These goals can be achieved through a notification and "opt out" mechanism.

C. The Commission Need Not Prescribe Rules Limiting the Duration or Scope of Customer Approval to Use CPNI or Dictating the Contents of Customer Notification

Regardless of the means by which a carrier seeks approval to use a customer's CPNI, the approval should not be limited in duration or scope unless the Act explicitly requires such limitation. For example, Section 222(d)(3) provides that the "telemarketing, referral or administrative" services delivered to the customer during inbound calls may last "for the duration of the call."²⁰ Thus, once again, Congress created an explicit limit in one part of Section 222; its silence in others should be construed to evince an intent to allow broader "approval" in other contexts.

¹⁹ Computer III Remand, ¶ 85, n.155.

²⁰ Even here, we believe Congress intended that a CPNI use authorization obtained on an incoming call may be presumed to remain in effect for the duration of the call at a minimum. If the carrier seeks and receives approval from the customer for both the current and future contacts, the approval should remain in effect until it is changed by the customer.

If the approval occurs in a context other than during an inbound call -- for example, after the customer receives written notice and does not “opt out” -- the Commission should not place limits on “(1) how long a customer’s CPNI use authorization should remain valid; (2) how often carriers may contact a customer in order to attempt to obtain CPNI use authorization, whether or not the customer has requested restriction of its CPNI; and (3) whether and to what extent customers may authorize partial access to their CPNI.”²¹ The Act contains no such restrictions, and the Commission should not impose regulations related to the subject.

As long as the customer’s authorization for use of his CPNI remains accurate -- i.e., the carrier is not putting the CPNI to new uses not previously disclosed -- and the customer does not change his previous authorization, the authorization should remain valid indefinitely. Furthermore, as markets become more and more competitive, it is not in a carrier’s interest to pester its customers for approval to use CPNI; customers irritated by overly frequent or annoying contacts will be able to voice their displeasure by going elsewhere. Thus, the Commission need not impose limits on the number of contacts a carrier may make with its customers.

“Partial” customer authorization is nearly impossible to administer. The record of such a customer would have to be specifically annotated, and the chance of errors would be high because the carrier would have to check each customer’s record for the annotation -- and the limits of the “partial” authorization -- prior to any marketing campaign. Indeed, when the pre-1996 Act CPNI rules required such a scheme, Pacific found the scheme prohibitively complex to design and was never able to implement it efficiently in its system. Instead, Pacific obtained permission from the Commission simply to ask customers who wanted partial restriction to restrict their entire record.

²¹ NPRM, ¶ 33.

Likewise, the Commission need not prescribe the contents of the notice.²² If the Commission feels compelled to do so, however, it should adopt only a “safe harbor” delineating the form of notice that would be conclusively presumed reasonable. Carriers choosing the safe harbor would be insulated from any challenge to the adequacy of the notice, but carriers could also choose a different form of notice if they wished. The “safe harbor” requirements might include 1) a list of the ways in which the carrier intended to use the CPNI, 2) a description of the customer’s “opt out” rights, and 3) a response card for the customer to use to indicate his desire to “opt out” and limit the proposed use of his CPNI.²³

D. The Commission Need Not Promulgate New Rules With Regard to CPNI Disclosure To Third Parties

The Commission inquires whether it should implement rules to protect customers from release of their CPNI to third parties.²⁴ Section 222(c)(2) of the Act is clear that an affirmative written request from the customer is required for such release, and the Commission need not promulgate additional rules. We note that there are other state and federal statutes and rules protecting customers’ privacy interests in their telephone records -- for example, the federal Electronic Communications Privacy Act²⁵ and California Public Utilities Code Section 2891 -- and the Commission runs the risk of promulgating inconsistent rules if it expands on the language of Section 222(c)(2). The requirement of written customer consent to release information to third parties is not new; it is the rule today, and there is no need for change. In a competitive environment, it is in the interest of the carrier to protect

²² *Id.*, ¶ 28.

²³ *Id.*

²⁴ *Id.*, ¶ 34.

²⁵ 18 U.S.C. §§ 2510 *et seq.*; *see also* 18 U.S.C. § 2703.

customer information from unauthorized access by third parties who likely are trying to win these customers away.

V. THE COMMISSION NEED NOT PROMULGATE DETAILED RULES WITH REGARD TO AGGREGATE CUSTOMER INFORMATION

The Commission asks whether rules are required to implement Section 222(c)(3) of the Act, which relates to aggregate customer information.²⁶ Because the Act is explicit, we do not believe additional rules are necessary. To the extent Section 222(c)(3) incorporates Section 222(c)(1), the Commission will have already promulgated rules interpreting the latter section, and no new rules are necessary.

We note, however, that nothing in the new Act requires carriers “to notify third parties about the availability of aggregate CPNI used by these carriers.”²⁷ Nonetheless, the Commission asks whether it should extend its Computer III rules -- which require certain carriers to publish notices of the availability of aggregate customer information in trade publications or newsletters -- to all LECs. As noted below, we believe the Computer III rules should be eliminated. However, if the Commission proposes to promulgate aggregate customer information notification rules, we advocate that the rules allow carriers to give notice of the availability of aggregate customer information by posting it on an Internet home page or by any other means reasonably designed to inform third parties of the information’s availability.

²⁶ NPRM, ¶ 37.

²⁷ Id.

VI. THE COMMISSION SHOULD ELIMINATE TO THE MAXIMUM EXTENT POSSIBLE PRE-EXISTING CPNI RULES

The Commission asks whether there are statutory, competitive or privacy reasons that justify the continued application of pre-1996 Act CPNI rules to the BOCs, GTE and AT&T, or extension of those rules to other companies.²⁸ We support neither continued application of the pre-1996 Act CPNI rules to the BOCs, nor the extension of those rules to carriers not affiliated with AT&T, the BOCs and GTE. Likewise, the computerized safeguards and manual file indicators previously required to prevent unauthorized access to CPNI are inconsistent with Section 222, and should be eliminated.²⁹

Market conditions and other circumstances already justify discontinuing application of the Computer III CPNI rules to BOCs.³⁰ We described these conditions in detail a year ago in the context of the Computer III Further Remand proceedings.³¹ As we stated then, removal of structural safeguards was justified by “1) the substantial growth of the enhanced services markets, 2) the substantial growth in network services competition and 3) the substantial increase in BOC unbundling and Intelligent Network competition.”³²

²⁸ Id., ¶¶ 3, 35-36, 41-42.

²⁹ Id., ¶ 35.

³⁰ See id. (seeking comment on “specific market conditions or other circumstances that would warrant removal of [the Computer III] requirements in the future.”).

³¹ For a thorough description of the ways in which the CPE and enhanced services markets have matured, see Comments and Reply Comments of Pacific Bell and Nevada Bell on the Notice of Proposed Rulemaking, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, dated April 7, 1995 (“Comments”) and May 19, 1995 (“Reply Comments”), pertinent excerpts of which are attached hereto collectively as Appendix B.

³² Computer III Further Remand, Comments, supra, at iii.

The market evolution we described then justifies the elimination of the Computer III CPNI requirements. Eliminating those CPNI rules would not reduce the effectiveness of other Computer III requirements.³³ The other requirements relate to non-discriminatory network access and accounting safeguards, which are independent of the CPNI rules.³⁴ In fact, eliminating the Computer III CPNI rules would improve the balance between restrictive safeguards and efficiency benefits of integration.³⁵ The password/ID requirements, prior authorization requirements for customers with more than 20 lines, and other CPNI requirements reduce the efficiencies that can be gained via integrated marketing of services. Overlaying new CPNI rules for implementation of the Telecommunications Act on the Computer III rules would further reduce these efficiencies. Eliminating the Computer III CPNI rules, however, would increase efficiency, bringing more and lower priced services to the public.³⁶

The pre-1996 Act CPNI rules have served their purpose, and it is time to eliminate them. There are no privacy reasons to continue applying the rules, and the market for telecommunications has matured sufficiently to alleviate previous competitive concerns.³⁷ If a robust telecommunications market is to develop, every carrier must be equally capable of offering its full product line to customers so they can make informed choices.

³³ See NPRM, ¶ 41.

³⁴ Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 FCC 2d 958, ¶¶ 111-265 (1986) ("Computer III Report and Order").

³⁵ See April 2, 1990 Ex Parte letter from Celia Nogales of Pacific Telesis to Donna R. Searcy, Secretary, FCC, CC Docket 88-2, Open Network Architecture (Appendix C hereto). This ex parte describes the erosion of the Computer III equilibrium between safeguards and operational efficiencies caused by the continual addition of safeguards.

³⁶ See, e.g., Computer III Report and Order, ¶ 99.

³⁷ See NPRM, ¶ 41.

Furthermore, the computerized safeguards the BOCs were required to implement under the pre-existing rules are inconsistent with the 1996 Act.³⁸ For example, under the old CPNI rules, the BOCs and GTE were required to implement a password/ID system that prohibited certain marketing employees from gaining access to CPNI of customers who had restricted their account information from use for marketing enhanced services and CPE. The password/ID system does not allow employees to override the restriction and gain access to the relevant CPNI for any purpose. This absolute restriction is inconsistent with the 1996 Act, because the Act allows access to CPNI -- even previously restricted CPNI -- on inbound calls:

nothing in [47 U.S.C. Section 222] prohibits a telecommunications carrier from using, disclosing or permitting access to [CPNI] obtained from its customers . . . (3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service.³⁹

Since the 1996 Act allows carriers to use CPNI, with customer approval, to provide any inbound telemarketing to the customer for the duration of the call, the previous access limitations should be discontinued. Normal database and computer system access controls to protect CPNI from access by unauthorized employees -- employees whose jobs do not require such access -- or third parties should satisfy the intent of the Act in this area.

The Commission's existing requirement that carriers notify multiline customers of the proposed uses of their CPNI⁴⁰ separately from any notification to all customers provided under the

³⁸ *Id.*, ¶ 35.

³⁹ 47 U.S.C. § 222(d)(3).

⁴⁰ NPRM, ¶ 41.

1996 Act is no longer necessary because the Commission's goals have already been realized. The CPE and enhanced services markets are fully competitive.⁴¹ With hundreds of new local exchange service providers entering the field, any remaining perceived value of the pre-existing rules has disappeared.

There are neither privacy nor competitive reasons for continuing the pre-existing requirements.⁴² Requiring the BOCs, GTE and AT&T to maintain two different CPNI schemes simultaneously represents unnecessary regulation that will only cause customer and employee confusion and competitive disparity. Indeed, the Commission already proposes to eliminate the existing requirements as they pertain to AT&T.⁴³ It would not be in keeping with competitive parity to eliminate the old CPNI rules for AT&T while leaving existing rules in place for the BOCs and GTE.

The competitive advantage that the pre-1996 Act rules addressed was the fact that customers of enhanced service providers and CPE vendors were also, by necessity, customers of AT&T, the BOCs and GTE. The perception was that these carriers had access to customer CPNI that could be used in ways that disadvantaged their smaller competitors. Other concerns had to do with the fact that the CPNI could provide carriers clues that would allow them to market new services more effectively than smaller competitors. With many new local service providers entering the local exchange market and pursuing the most desirable customers, the pre-existing scheme is no longer viable. The Act seeks to encourage efficiency and the delivery of new, better products.⁴⁴ Special restrictive regulatory treatment for certain carriers is not consistent with the deregulatory and pro-competitive goals of the Act.

⁴¹ See Appendix B.

⁴² NPRM, ¶ 41.

⁴³ *Id.*, ¶ 3.

⁴⁴ See, e.g., 47 U.S.C. § 706 (promoting advanced telecommunications incentives).

VII. THE COMMISSION SHOULD REFRAIN FROM OVERREGULATING SUBSCRIBER LIST INFORMATION

The Commission next proposes rules regarding provision of subscriber list information on a timely and unbundled basis, under nondiscriminatory rates, terms and conditions.⁴⁵ We agree with the Commission that Section 222(e) “require[s] not only LECs, but also any telecommunications carrier, including an IXC or cable operator, for example, to meet the requirements of this section to the extent such carrier provides telephone exchange service.”⁴⁶ A “telecommunications carrier” is defined in Section 3(44) of the 1934 Act as a “provider of telecommunications services.” According to Section 3(46) of the Act, “the term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” Thus, the definition of “telecommunications carrier” is not limited to LECs, and IXCs, cable operators and any other entity that provides “telephone exchange service” are bound by Section 222(e), regardless of the facilities such companies use to provide the services.

The Commission next asks for the meaning of the term “primary advertising classification.”⁴⁷ The Act states that such classifications are those “assigned at the time of establishment of . . . service,” Section 222(f)(3)(A), so the definition must be confined to the classification assigned when the customer first establishes a listing. It does not include yellow page headings subsequently developed by the directory publisher. These headings constitute proprietary,

⁴⁵ NPRM, ¶¶ 43 et seq., citing 47 U.S.C. § 222(e).

⁴⁶ NPRM, ¶ 43.

⁴⁷ *Id.*, ¶ 44.

trade secret information, and any interpretation that requires the disclosure of this information would run afoul of statutory and common law trade secret protections.

We believe that some safeguards are necessary “to ensure that a person seeking subscriber list information is doing so for the specified purpose of ‘publishing directories in any format.’”⁴⁸ A written request describing generally the directories to be published, and containing some certification that the information is being requested for the publication of a directory, would help ensure that the information is sought for a permissible use.

Finally, the Commission asks about the scope of its authority with respect to subscriber list information.⁴⁹ Historically, the FCC has had little involvement with the release of such information. Unlike CPNI, subscriber list information has been authorized for public release by the customer, and therefore does not raise privacy concerns. For most companies today, provision of subscriber list information is not regulated, but offered under contract. Pacific’s treatment of subscriber list information is governed by a state tariff, and it has experienced few problems with this approach. We urge the Commission not to add unnecessary regulation in this area.

VIII. CONCLUSION

We propose CPNI rules that allow the categorization of “telecommunications services” to evolve with changing technology; allow carriers to treat enhanced services and CPE as part of the local or interexchange “buckets” of telecommunications services if they already market those services as a package; give carriers flexibility in how they seek approval to use CPNI, and allow oral approval

⁴⁸ *Id.*, ¶ 46.

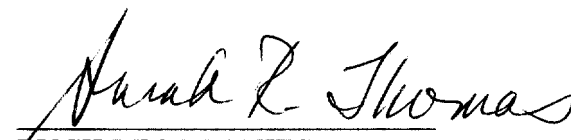
⁴⁹ *Id.*, ¶¶ 19, 45.

and a written notice/"opt out" mechanism; refrain from promulgating detailed rules regarding aggregate customer information or release of CPNI to third parties; eliminate the existing Computer III rules and regulatory disparity among carriers; and avoid overregulation regarding subscriber list information.

We believe our proposals will comport with the reasonable expectations of our customers, promote regulatory parity, and ensure that customers and competitors alike obtain the maximum benefits from the new telecommunications marketplace. We urge the Commission to adopt our suggestions.

Respectfully submitted,

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Date: June 11, 1996

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CERTIFICATE OF SERVICE

I, Michelle McSoley, hereby certify that copies of the foregoing
“**COMMENTS OF PACIFIC TELESIS GROUP**” were served by first-class
United States mail, postage prepaid, upon the party appearing below this 11th day
of June 1996.

Janice Myles
Common Carrier Bureau
1919 M Street, NW
Room 544
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Michelle McSoley

APPENDIX A